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| **Appeal Decision** |
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| **by** **Edward Cousins BA, BL, LLM, Barrister** |
| an Inspector at the direction of the Secretary of State for Environment, Food and Rural Affairs |
| **Decision date: 11 August 2021**  |

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| **Appeal Ref: FPS/L3245/14A/3** |
| * This appeal is made under section 53(5) of, and paragraph 4(1) to, Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Shropshire Council not to make an Order under section 53(2) of that Act.
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| * The application made by the Stoke-on-Tern Parish Council (‘the Parish Council’) as Applicants dated 17 November 2016 (‘the Application’) was refused by way of notice from Shropshire Council (‘the Council’) dated 17 September 2020.
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| * The Appellants claim that a bridleway should be recorded on the Definitive Map and Statement for the area.
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Summary of Decision: The Appeal is allowed

**Preliminary Matters**

1. I have been directed by the Secretary of State for the Environment, Food and Rural Affairs to determine an appeal (‘the Appeal’) under Section 53(5) of, and Paragraph 4(1) to, Schedule 14 of the Wildlife and Countryside Act 1981 (‘the 1981 Act’).
2. I have not visited the site. However, I am satisfied that I can make my decision without the need to do so.

 **The Appeal**

1. The Appeal is made against the Council’s decision not to make an order in respect of the Application to add a bridleway (‘the Bridleway’) to the definitive map and statement (‘the DMS’) from Ollerton Lodge, in the parish of Stoke-on-Tern, to Peplow Chapel, in the parish of Hodnet.

**The Application Route**

1. The application route (‘the Application Route’) is identified on the plans included within the Application, and the Appeal documentation (‘the Appeal Bundle’). For the purposes of the Appeal, I refer to the plan exhibited at Appendix B to the Council’s Delegated Powers Report (‘the Officer’s Report’), which I have appended to this Decision as Annex 1. This plan not only identifies the Application Route, but also the way referred to as Footpath 9 ‘FN 9’ which bears the number 0227/9/1, the relevance of which will be referred to below.

**Main Issues**

**Summary**

1. This section contains a summary of the Main Issues. I also refer to a number of subsidiary issues in the Section entitled ‘Discussion’ below.
2. Section 53(3)(c)(i) of 1981 Act specifies that an order should be made following the discovery of evidence which, when considered with all other relevant evidence, shows that *“a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist…”.*
3. In considering this issue there are two tests to be applied:
4. Test A: Does a right of way subsist on the balance of probabilities?
5. Test B: Is it reasonable to allege that a right of way subsists? For this possibility to arise it will be necessary to show that a reasonable person, having considered all the relevant evidence available, could reasonably allege a right of way to subsist. If there is a conflict of credible evidence, but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, then it is reasonable to allege that one does.
6. For the purposes of this Appeal Decision, and having regard to the legal principles and the evidential base, in my judgment, I need only be satisfied that the evidence meets Test B, the lesser test.[[1]](#footnote-1)
7. This will require an assessment of the documentary evidence to support the dedication of a public right of way under common law, together with consideration of the user evidence sufficient to support dedication in accordance with the provisions of section 31 of the Highways Act 1980.

**The Background**

1. On 17November 2016, the Application was registered with the Council by the Parish Council to record the Bridleway pursuant to the provisions of the 1981 Act. The Applicationwas prompted by the Planning Application, reference 15/04785/FUL at Ollerton Lodge.
2. The user and documentary evidence in support of the Application was submitted in May 2016. However, the Council considered that the documentation could not be considered to be a valid formal application at the time, as none of the application paperwork had been completed. The Application form and Certificate of Notice served on the landowners was not submitted until 17th November 2016, at which point the Application was then added to the Register.
3. However, owing to the fact that there was a considerable backlog of formal applications registered with the Council with only limited staff resources, the Council stated that it did not have sufficient resources to determine the Application in the short term.
4. It is in that contextual framework that the Parish Council applied to the Secretary of State to direct the Council to determine the Application. The appeal was successful and on 28th February 2020 an Inspector directed the Council to determine the Application within six months.

**Discussion**

**The Common Law and Statutory Intervention**

***Common Law***

1. The common law rule is *“Once a highway always a highway”*. There is no extinctive presumption or prescription arising from the non-exercise of rights of passage, save only when this arises from natural causes such as inroads of the sea or landslips. In order to extinguish or even vary a right, intervention by statute has always been necessary.[[2]](#footnote-2) If it can be demonstrated that a way is an ancient highway the fact that it has fallen into disuse, for example because another more convenient highway has been dedicated, does not cause it to cease to be a highway.

*‘Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used would preclude the public from ever resuming the exercise of the rights to use it if and when they think proper’*[[3]](#footnote-3)

In *Dawes v Hawkins[[4]](#footnote-4)* Williams J stated that:

*‘It is also an established maxim, once a highway always a highway: for, the public cannot release their rights, and there is no extinctive presumption or prescription’*.[[5]](#footnote-5)

***Statutory Intervention***

1. Section 31(1) of the Highways Act 1980 (“the 1980 Act”) provides as follows:

*“Where a way, ... has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”*

1. This requires that the public must have used the way without interruption and as of right, that is without force, secrecy, or permission. Section 31(2) provides that:

*“The 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.*

1. Thus, a route can be presumed to have been dedicated under section 31(1) of the 1980 Act if a route has been used by the public for 20 or more years. However, when calculating the 20-year period there must be a clear event or events that make the public realise that their rights are being challenged – known as *‘calling into question such events which could be construed as being relevant include the erection of notices requiring people not to use the way; the blocking of the way; or submitting a definitive map modification order to the local authority in question.’*
2. Therefore, the period of 20 years is calculated retrospectively from the date on which the right of the public to use the way is called into question.
3. In the case of *R (ONA of Godmanchester & Drain) v Secretary of State for the Environment, Food and Rural Affairs[[6]](#footnote-6)* the House of Lords stated that the word ‘*during*’ does not mean that the intention must be shown to have continued throughout the period of user. It is sufficient to demonstrate that the intention continued for part of the period. Further, there is no requirement for each person to have used the way for the whole of the period, although those who done so may contribute more in terms of evidential value. Periods of use by different people exercising separate rights at different stages can all be added together. Thus, it has been held that the period of 18 months use will suffice. However, the weight to be attached to each person will vary, depending on the period of such use, the route(s) used, the clarity of the detail given, especially in relation to the purpose, frequency and timings of the journeys recalled.
4. I am satisfied that the relevant twenty-year period is from November 1996 to November 2016.

**The Parties’ Respective Cases - Summary**

***The Parish Council***

1. The Parish Council provides a two-fold basis for its appeal, namely –
2. Historical documentary mapping evidence of the existence of the Application Route.
3. General evidence of public use and user evidence over the Application Route.
4. The essence of the Appellants’ case is that on the balance of information supplied by the Parish Council relating to both documents and user, there is sufficient evidence in support of the contention that the Application Route has been used as a public highway in the nature of a bridleway for the minimum period of 20 years before the date of the Application.

It is the case for the Parish Council that the Council’s decision to reject such evidence pays insufficient attention to Test B – i.e., is it reasonable to allege that a right of way subsists in the background of the fact that there is a conflict of credible evidence but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, exists.

***The Council***

1. The Council seeks to discount the Appellants evidence by identifying ‘broad lines of discussion’, namely:
2. Application of the legal tests;
3. Interpretation of the evidence examined during the original investigation;
4. Initial commentary on the additional user evidence submitted by the Appellant;
5. The Council’s position with regard to the FN9 ‘anomaly’; and
6. The rigour applied by the Council during its original investigation.

**THE EVIDENCE**

**Section 31 and User Evidence**

**At Common Law**

***Documentary evidence – Mapping.***

1. Both the Council and the Parish Council rely upon many of the same historical documents in support of their respective cases. As a general point it must be reiterated that the depiction of a way upon a map is not, of itself, evidence of a highway. As oft stated by the Ordnance Survey, the lack of depiction on mapping cannot necessarily be relied upon as an indication that there is not a used way on the ground. The important considerations in this regard are whether such a depiction is a reflection of the public’s use of the way as a highway, or whether such use is in the nature of private use for local access.
2. The mapping evidence upon which the parties rely can be divided into the following:
3. County Maps
4. Estate Maps
5. Tithe Maps
6. Ordnance Survey Maps
7. Bartholomew’s Half Inch Maps
8. Finance Act Maps
9. Council Records
10. Before delving into the detail as set out in the parties’ respective cases, I reiterate the point as to the evidential test to be applied, namely Test B – is it reasonable to allege that a right of way subsists? It is in the backdrop of Test B that the mapping evidence should be considered.
11. Insofar as County Maps are concerned, the parties refer to Roque’s County Map of Shropshire (1752); Bough’s County Map of Shropshire (1808); and Greenwood’s County Map of Shropshire (1827). Insofar as Roque is concerned, the Application Route is not shown. As to Bough’s Map, although the Council accept that this map identifies a through route between Ollerton and Peplow as an enclosed lane, (in the same manner as other routes shown on the map), the alignment differs along its length when compared with the Application Route.
12. I therefore do not consider that the evidence provided by Bough is in itself sufficient, and I accept the submission made by the Council in this regard.
13. Insofar as Greenwood’s map is concerned, again, the Council accepts that the map identifies a through route between Peplow and Ollerton as an enclosed lane but only so far as the River Tern is concerned. There is a gap in that an enclosed lane is then shown as starting in the middle of Ollerton Park land and running on a similar trajectory as shown on Bough’s map. I therefore do not consider that this is sufficient evidence in the circumstances.
14. Insofar as the Estate Maps are concerned, reference is made by the Council to the 1736 map of the Manor of Peplow (1736); the Survey Map for Peplow (1815); and various maps of parts of the Hodnet and Stoke-Upon-Tern Parishes (1836). Reference is also made to the Peplow Hall Estate Map (1922-23). No reliance appears to be made by the Parish Council to such maps. In any event, for the same reasons as expressed above, I do not consider that these Estate Maps identify anything other than the fact that in certain cases a route is identified over a part or parts of the Application Route, but not in a continuous delineation from the beginning to the end of the Application Route. Further, it should be noted that Estate Maps are usually made for the benefit of the landowner. The depiction of a way does not mean the depiction of a route used by the public as a highway, rather than as the identification of estate roads or ways for the purposes of the landowner.
15. The Peplow Hall Estate Map (1922-23) does show the whole length of the Application Route, but I agree with the submission made by the Council that the fact that it is shown coloured blue, as is the land surrounding Peplow Hall and Ollerton Lodge together forming Plot 1, indicates that it was apparently considered as an accommodation road rather than a public highway. Those roads which are now recorded as highways are shown uncoloured on this plan. Thus, again, I do not consider that such evidence satisfies the evidential requirements.
16. Insofar as the 1836 Parish Maps are concerned, again, these only identify parts of what could be construed as the Application Route, and in all three cases the remainder of the Application Route is not shown on any of these maps
17. As to the Tithe Maps, it has not been possible to study the Stoke-Upon-Tern Tithe Map (1837), owing to inaccessibility. However, insofar as the 1840 Peplow Township Map is concerned, again, I do not consider that this satisfies the evidential requirements.
18. Thus, although these various maps do indicate at various stages of history that ways are recorded along parts of, or in the vicinity of, the Application Route, I consider that overall, such evidence is inconclusive. Further, even if such evidence could in one or two instances be construed as indicating a continuous route, notably on the basis that from an early stage in history there was a bridge over the River Tern linking ways on each side of the River, there is no sufficient evidence for the purposes of Test B that such a way was used by the public for highway purposes.

***Ordnance Survey Mapping***

1. However, insofar as the Ordnance Survey Maps are concerned, a different picture emerges. Reliance is placed by both parties on the following in support of their respective cases:
2. OS1” 1st Edition 1833
3. OS Boundary Sketch Map 1878
4. OS1” Revised New Series 1899
5. OS6” 1st Edition 1884
6. OS6” 2nd Edition 1902
7. OS25” 1st Edition 1881
8. OS1:2, 500 2nd Edition 1901
9. OS1”, 7th Series 1952-1961
10. (1) *OS1” 1st Edition 1833*

The Application Route is identified as an enclosed route from whence it starts at the entrance to the Peplow Hall Estate to the Western Bridge over the River Tern. It is then shown as an enclosed route, initially with two pecked lines up to the Eastern Bridge and then with a single pecked line running part of the way through the Ollerton Park Estate on the line of FP9 (see the discussion with regard to FP9, below). It is then identified as an enclosed route still on the line of FN9 before deviating from that line and curving north-west and then north-east to end on the road where Ollerton Lodge is on situated.

1. *OS Boundary Sketch Map 1878*

This is a sketch map produced by the Ordnance Survey’s Surveyor. Although the Boundary Remark Book for the area in question (Ref OS26/8877) has been unavailable to view owing to Covid-19. The excerpts produced by the Appellants indicate that the position where the Application Route crosses the River Tern has been noted by the Surveyor.

1. OS1” Revised New Series 1899

The Application Route is shown as an enclosed lane from where it commences at Peplow Chapel through to the Parish boundary. From there it is then shown as an unenclosed lane through to Ollerton Lodge.

1. *OS6” 1st Edition 1884*

The Application Route is identified as an enclosed road from Peplow Chapel through to the River Tern. From that point a route is shown first as an unenclosed lane with two pecked lines running over the Eastern Bridge and then partway along the line of FP9. It is then shown as meeting a gate and continues as an enclosed lane along the line of FP9. Part of the way along the lane it then deviates from FP9 curving north-west and then north-east to end on the road where Ollerton Lodge is now located.

1. *OS6” 2nd Edition 1902*

The Application Route is shown in its entirety. From Peplow Chapel through to the Parish boundary it is shown as an enclosed lane. A tramway connecting the estate buildings is shown running over the lane partway along. From the Parish boundary it then continues as an unenclosed lane with two pecked lines to a gate where it meets the road at Ollerton Lodge.

1. *OS25” 1st Edition 1881*

Insofar as this map is concerned, all the features identified in (4) above, are identical except for a gate which is shown on the Western Bridge over the River Tern.

1. *OS1:2,500 2nd Edition 1901*

All the features shown on the map at (5), above, are identical.

1. *OS1”, 7th Series 1952-1961*

It is the Appellants’ case that this map identifies the Application Route as lying to the north-west of Ollerton Park. It is contended that this has a higher status than a footpath or track as it is shown by pecked lines. According to the key its status is therefore an unfenced road. The western part between Peplow Chapel and lying just to the east of the bridge is shown as fenced. FP9 is not shown on this OS map as a distinct footpath at that stage.

1. I should mention that the Appellants have placed reliance upon other mapping documentation such as the Bartholomew’s Half-Inch Maps and Finance Act Maps to further support their case as to the status of the Application Route as a public highway. Again, in my judgment, such evidence provides further support for the case that there was a continuous way along the Application Route. However, in itself I do not consider that in itself sufficient to satisfy Test B.
2. It also should be noted that insofar as the Council records are concerned, the 1929 Handover Map has the Application Route shown as uncoloured, thereby indicating that at that stage it was not sufficient to be considered as a highway maintainable at public expense by the Highway Authority. That, of course, does not conclusively demonstrate its non-highway status – merely that it was not then considered worthwhile as being adopted by the Highway Authority. Also, it is to be noted that under the National Parks and Access to the Countryside Act 1949, the Application Route was not claimed either by Hodnet Parish Council, or the Parish Council in 1950. However, Stoke-On-Tern FP9 was in fact claimed by the Parish Council on the line which is now recorded as FP9. This line stops short of the Parish Council boundary and terminates at the point where it now meets the way now identified as the Application Route – a short distance east of the gate onto the Peplow Hall Estate.
3. Finally, I should mention that for the purposes of the Definitive Map of Rights of Way, the Application Route is not identified on any of the following - the Draft/Provisional Map 1958, the 1st Definitive Map 1958, the Revised Definitive Map 1965, the Revised Definitive Map 2020, or the working digital copy of the Definitive Map. There is also no record of a highways statement and map, or any subsequent statutory declaration, having ever been deposited with the Council by the landowner, in respect of the land over which the Application Route runs.

***Summary***

1. In essence, therefore, and drawing together the various threads, I consider that although the earlier historical mapping evidence is inconclusive, I find that the later mapping evidence as identified, particularly by Ordnance Survey Mapping, does indicate a continuous way or track for many decades, if not centuries, along the Application Route from Peplow Chapel through to Ollerton Lodge. This could support the interpretation of there being a continuous way along the Application Route between those two points. However, this in itself, in my judgment, does not mean that such evidence demonstrates that the public used the Application Route as a highway. It is therefore necessary to look at user evidence, to which I shall make reference below, in order to make a proper assessment as to the sufficiency, or otherwise, of the available evidence overall. Thus, the evidential base is to be sought elsewhere if it exists.

 **The FP9 “anomaly”**

1. Passing reference has already been made to the issues surrounding FP9. As is noted by the Appellants, the Council recognises that FP9 as currently mapped represents an anomaly as it terminates at no clear destination. The question therefore that is asked by the Appellants is - why would a public footpath as recorded on the Definitive Map, in effect, lead to a dead-end? As already mentioned, FP9 was claimed by the Parish Council when the first definitive maps were drawn in the 1950s, but for reasons, now unknown, the possible continuation of this path was not claimed by Hodnet Parish Council as it lay within their parish. Further evidence is relied upon by the Appellants in Section F of the Appellants’ Appeal Bundle in support of the fact that no good reason has been produced as to why FP9 terminates where it does. I do not propose to make any further reference to this aspect as it enters the realm of speculation, and not evidence.

**User Evidence**

**The Council’s Case**

1. The Officer’s Report states at paragraph 5.1 that the Investigating Officer has weighed up all the available user and documentary evidence and concluded on the balance of probabilities that public rights do not subsist along the Application Route. *“The user and documentary evidence is not considered of sufficient quantity and quality to support the making of an order”*, for the reasons stated. However, two points emerge for consideration:
2. At that stage, the Council did not appear to have considered Test B, but directed its attention their interpretation of the facts to Test A – the balance of probabilities test.
3. When assessing the quantity and quality of evidence in the context of Section 31 of the 1980 Act in relation to *“as of right”*, the Council stated that only 6 witnesses out of the compliment of 13 witnesses have used the Application Route for the full 20-year period from 1996 to 2016, and the remaining witnesses have used the Application Route for periods of between 1 and 16 years. The interpretation that witnesses should use the right of way for the full 20-year period is an incorrect assessment of the legal principle relating to user as of right.
4. A number of further points are made by the Council insofar as the requirements of Section 31 of the 1980 Act are concerned as set out in paragraphs 5.2 – 5.12 of the Officer’s Report. It is contended by the Council that it is questionable whether the use of the Application Route can be considered to have been by the general public. Of the 28 witness statements received, over 16 were either tenants of the Peplow Hall Estate or the Ollerton Park land, or were friends of tenants or members of the same family. It is also contended that of the other 15 witnesses (i.e., over and above the 13 witnesses, to which reference has been made) it is asserted that such witnesses have not used the Application Route as of right. The basis for this is that their use has been by permission, either under the ‘*reciprocal rights*’ agreement between the owners of Peplow Hall Estate and the Ollerton Park land, or as tenants of the Peplow Hall Estate, all being known acquaintances of those tenants.
5. It is further submitted that actions taken by previous and current owners of Peplow Hall on the Eastern Bridge demonstrate a support a lack of intention to dedicate under Section 31(3) of the 1980 Act. Illustrations of this lack of intention are demonstrated by the interruption use of the Application Route by the public in the form of obstructions initially by the use of a locked gate, and later by a central bollard with a chain, both of which were locked by coded padlock on the Eastern Bridge. In this context, therefore, it is contended by the Council that the presence of these barriers would have interrupted all forms of use by the public, if not have prevented it outright.
6. An assertion is also made by the Council that there is no evidence of intention to dedicate by the demonstration on the part of the owners of both the Peplow Hall Estate and the Ollerton Park land by erecting and maintaining notices inconsistent with the dedication of the way as a highway in such a manner as to be visible to persons using the way. Such notices apparently have been in place at each entrance to the Peplow Hall Estate for at least 40 years, so it is said. Apparently there was a long- established practice on the part of Lord Newborough to instruct estate workers and tenants to challenge verbally those who they saw using the Application Route, which is supported by at least two witnesses.
7. Insofar as Section 32 of the 1980 Act is concerned – evidence of dedication of a way as a highway, it is contended by the Council that all available historical and documentary sources have not yielded significant evidence of the Application Route being dedicated as a highway. In this regard reference is made to the principle that OS maps provide no indication of the status of a route, only that the route was physically available on the ground and shown on the mapping as a physical feature.
8. Further, reference is made to the fact that Hodnet Parish Council did not claim a public right of way on the Application Route through the Peplow Hall Estate, despite the fact that the Stoke-On-Tern Parish Council had sought a right of way within their parish boundaries.
9. In essence, therefore, the case presented by the Council is that the user evidence relied upon by the Appellants is not sufficient to claim the Application Route as a public right of way on the balance of probabilities under Test A.

**The Appellants’ Case**

1. Insofar as user evidence is concerned, the Appellants rely upon 27 user evidence statements as submitted with the Application together with historical mapping. Reliance has also been placed upon four user evidence statements submitted in support. The user evidence is contained in Section I of the Appeal Bundle. It is noted in paragraph 185 that Appellants received some 62 further user statements, thereby providing a total of 90 formal witness statements in support of the original Application. It is considered by the Appellants that such evidence is substantial, particularly in the context of the fact that the area concerned contains low population numbers in two key settlements, namely Ollerton and Peplow.
2. The statement made by the Council in the Officer’s Report is challenged in that only 6 of the 28 user statements can be considered to be supportive of the Application as the remainder of such witnesses fail to assert that there has been continuous use of the Application Route for the full period of 20 years. This contention is, as a matter of law incorrect in that such evidence of user can be, in effect, can be construed on a cumulative basis.
3. In Appendix E1 of the list of documents (‘the List of Documents’) annexed to the Appeal Bundle the Appellants conduct an analysis of some of the witnesses discounted by the Council. This challenges the assertions made by the Council in relation to e.g., estate workers or tenants of the neighbouring landowners, particularly in relation to what is intended as being *‘reciprocal rights’*.
4. The tenants contend that the majority of the user statements relied upon by the Appellants demonstrates that much use made of the Application Route was made without permission or challenge. Any alleged *“permission”* was no more than an implied consent associated with neighbourly interaction whilst using the Application Route.
5. In this context, in Appendix E3 of the list of Documents, the Appellants have prepared their own spreadsheet analysis of the user statements submitted with a colour coded *“timeline”* of use reflecting the Appellants’ interpretation of the validity/robustness of such evidence. This is set out in paragraph 193 of the Appeal Bundle which divides the use made by the various witnesses into four groups, as set out. Insofar as the *‘new’* user evidence is concerned, the Appellants’ reference to this is contained in paragraphs 195-197 of the Appeal Bundle. Again, it is contended by the Appellants that similar to the 2016 statements, the 2020 witness statements demonstrate that the majority of users have used the Application Route without permission or challenge. This adds, so it is asserted, even more strength to the assertion that the claimed route had been used within current public memory as a public bridleway for many decades.
6. In the detailed analysis set out in Appendix E4 of the List of Documents, there are five groups of witnesses, the oldest recorded users being 11 during the period 1960-1969, and a further 7 users between 1943 and 1959.
7. In essence, therefore, the Appellants set out in paragraphs 198-201 a summary of the overall user evidence public use, as of right, for many decades as analysed in three groupings.

**Land Owner Evidence**

1. Both parties make reference in some detail to such evidence. It appears in Section H of the Appeal Bundle, and also detailed reference is made in Section 9 of the Officers’ Report and in the Council’s Additional Statement at paragraphs 13.16 and 13.17.
2. In Section H of the Appeal Bundle, the evidence is analysed by the Appellants under a number of heads, namely ‘*reciprocal rights*’, the evidence of the tenants of Peplow Hall Estate, the barriers referred to by the Council’s witnesses, signage, and the grant of permission to use the Application Route.
3. The essential thrust of such evidence is that each and every contention made by the Council can be countered by evidence or explanations to the contrary. Incidences of such explanations and counter-explanations are as follows:
4. Insofar as ‘*reciprocal rights*’ are concerned, the submission made by the Council by the respective landowners contained in a conveyance made in 1964 to use the Application Route i.e., Peplow Hall and Ollerton Park applies to the successors in title and also to their tenants of licensees. This argument is countered by the Appellants on the basis that this clause could only be expected to cover those working for the owners, tenants, or licensees of the respective landowners, but only whilst engaged in work activities. This aspect is a matter of the construction of the relevant clause of the conveyance, and is not something upon which any judgment can be made by me in this Decision. In my view, this is a matter which needs to be determined in order to resolve the conflict in evidence.
5. Insofar as the point made that the evidence of the tenants of the respective landowners, and the contention made that such persons could still use the Application Route, as of right, must again be a matter to be investigated.
6. Similarly, such barriers that may or may not have been installed at certain times in history together with bollards and chains, must, in my judgment, be the subject of further investigation in order to resolve the apparent conflicts of evidence. Similar concerns relate to the purported challenging of access by the apparent use of signage, and/or verbal challenges and/or the granting of permission, must again be the subject of investigation in order to resolve the conflicting evidence.
7. Thus, in these circumstances, I consider that the wide-ranging user evidence relied upon by the Appellants cannot easily be dismissed as it provides evidential value for the purposes of Test B which needs to be tested. As there is a conflict of credible evidence, but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, then it is reasonable to allege that one does.
8. In essence, therefore, a combination of the user evidence together with the mapping evidence, demonstrates that Test B is satisfied, in my judgment. I cannot for the purposes of this Application determine the overall position and the conflict between the needs to be resolved.

 **Summary**

1. Drawing together the various strands, I am satisfied that the evidence relied upon by the Appellants based upon the witness user statements, combined with the documentary evidence, demonstrates that having considered all the relevant evidence a reasonable person could reasonably allege a right of way to subsist along and over the Application Route. In this regard it is to be noted that it is accepted by the Council that such a through route has existed on the ground for many decades along the delineation of the Application Route, and although the user evidence is challenged in some considerable detail by the Council.
2. I am therefore satisfied that the evidence meets Test B, the lesser test for the purposes of Section 53(3)(c)(i) of the 1981 Act. There is a clear conflict of evidence between the parties which needs to be resolved.

**Conclusion**

1. Having regard to these and all other matters raised in the written representations I conclude that the Appeal should be allowed.

**FORMAL DECISION**

62. In accordance with paragraph 4(2) of Schedule 14 of the 1981 Act Shropshire Council is directed within 12 months of the date of issue of this Appeal Decision to make an order under Section 53(2) and Schedule 15 of the Act to modify the definitive map and statement for the area to add a bridleway (‘the Bridleway’) to the definitive map and statement (‘the DMS’) from Ollerton Lodge, in the parish of Stoke-on-Tern, to Peplow Chapel, in the parish of Hodnet identified in the Application dated 17 November 2016. This decision is made without prejudice to any decisions that may be given by the Secretary of State in accordance with his powers under Schedule 15 of the 1981 Act.

Edward Cousins

**Inspector**



1. No reference was made to these Tests in the Officer’s Report. This deficiency was pointed out to the Council by the Appellants in their Comments, and the fact that the wrong test was apparently being applied. It was then stated by the Council in its’ Additional Statement’ (wrongly dated March 2020 – I presume that this should be March 2021) that the Council has considered both Tests A and B, see paragraph 3.2. [↑](#footnote-ref-1)
2. See *Eyre v New Forest Highway Board* (1892) 56 JP 517. [↑](#footnote-ref-2)
3. See *Harvey v Truro Rural District Council* [1903] 2 CH 638, at 644, per Joyce J. [↑](#footnote-ref-3)
4. (1860) 8CB (NS) 848. [↑](#footnote-ref-4)
5. See also *Robinson Webster (Holdings) Ltd v Agombar* (2002) 1 P & CR 20. [↑](#footnote-ref-5)
6. [2007] UKHL 28. [↑](#footnote-ref-6)